

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04 – PLR-149147-03

Date: DECEMBER 01, 2003

Re:

Legend

Decedent	=
Spouse	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Accountant	=
<u>X</u>	=

Dear :

This is in response to your letter, dated August 18, 2003, submitted on behalf of H's estate, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminal interest property election (QTIP election) under section 2056(b)(7) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: On Date 1, Decedent and Spouse created Trust, a revocable trust. On Date 2, Decedent died testate survived by Spouse. The executor of Decedent's estate is Spouse. Spouse is a U.S. citizen.

Article II of Decedent's will gives to Spouse all of Decedent's interest in the home or residence and any insurance thereon, and all of Decedent's interest in Decedent's clothing, jewelry, furniture, furnishings, personal belongings, household goods, automobiles, and all other tangible personal property.

Article III gives the rest and residue of Decedent's property to the trustee of Trust, to be held, administered, and distributed under the terms and conditions of Trust.

Article VI. E. of Trust, provides that if Spouse survives Decedent by six months, the trustees shall distribute to the trustees of the Marital Trust, all of the residuary portion of the Decedent's share.

Article VIII. B., provides that the trustees shall distribute to Spouse or spend directly for her benefit all of the current net income of the Marital Trust in convenient, but at least quarterly, installments.

Article VIII. B.2., provides that the trustees shall distribute to Spouse such amounts from the principal of the Marital Trust as the trustees shall determine are necessary for her health, maintenance, and support, always taking into consideration his or her other resources and the standard of living enjoyed by her at the time of Decedent's death.

Article VIII. D., provides that during the life of Spouse, no person, including Spouse, shall have a power to appoint any part of the property in the Marital Trust to any person other than Spouse.

Article VIII. F., provides, in part, that Decedent's executor or trustees of Trust, in the executor's or trustees' discretion, may make an election to treat all or part of the property passing to the Marital Trust as qualified terminable interest property as that term is defined in section 2056.

Spouse engaged Accountant to prepare the federal estate tax return (Form 706) for Decedent's estate. The Form 706 for Decedent's estate was filed late on Date 3. No marital deduction was claimed for bequests to Decedent's spouse. No QTIP election was made on that return with respect to any property included on the return. The Form 706 reflected an estate tax due of \$x, which remittance was attached to the return. It is represented that Spouse relied on Accountant to prepare Decedent's Form 706, however, Accountant failed to make, or advise Spouse to make the QTIP election.

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You request an extension of time under section 301.9100-3 to make a QTIP election under section 2056(b)(7) for assets passing to the Marital Trust under Decedent's will and Trust.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by section 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) disallows this deduction where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of section 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of section 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life; and (III) to which an election under section 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under section 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E,

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G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections.

Section 301.9100-3(a) provides, in pertinent part, that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3. Requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in section 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1) provides, in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, an extension of time of 30 days from the date of this letter is granted for making the QTIP election under section 2056(b)(7). The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the form. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: